

## REMARKS

Claims 1-22 are pending in the application. Claims 1-22 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 4,922,435 to Cahlander et al. (“Cahlander”), in view of U.S. Patent No. 5,630,070 to Dietrich et al. (“Dietrich”) and/or what the examiner has characterized as the Applicants admitted prior art, collectively “the cited art.” Therefore, claims 1-22 are currently pending and at issue.

### Claim Language

Although not formally objected to, the examiner seems to disagree with the language in claims 1-22 as being functional in character. At paragraph 3 of the current action, the examiner states “any claiming functional language should then be limited to a system, machine, product or apparatus as to opposed to a process or method.” Without specific reference, the examiner also states, “[B]ecause system claims cover the structure of the machine. A ‘use’ can only be claimed by claiming the use as a process.” Applicants are at a loss as to what the examiner is specifically concerned with; however, Applicants will attempt to address the examiners apparent concern over the claim language.

The instant application clearly identifies a computer system and a software application (col. 1, lines 44-54). According to the M.P.E.P. at § 2106 IV, B. 1(a), “A claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program’s functionality to be realized.” Thus the functionality of the software program defines the structural relationship of the system elements. Further, in *Intel Corp. v. VIA Technologies, Inc*, the court held that “the core logic structure that was modified to perform a particular program was held to be adequate corresponding structure for a claimed function although the specification did not disclose internal circuitry of the core logic to show exactly how it must be modified.” (See *Intel Corp. v. VIA Technologies, Inc*, 319 F.3d 1357, 1366, 65 USPQ2d 1934, 1941 (Fed. Cir. 2003)). The logic structure in the instant application is clearly described in Fig. 3 and in the specification at col. 3, lines 38-66 and thus is adequate corresponding structure for the claimed functions.

Additionally, Applicants respectfully disagree with the examiner that Cahlander and Dietrich are capable of performing the claimed functions and therefore, by extension that Cahlander and/or Dietrich describe the same structure as that claimed. While the computer systems of Cahlander and Dietrich are capable of executing software programs, neither system is programmed to maintain desired *quantities* of food items at desired time intervals. (emphasis added) Moreover, as discussed above, it is the function of the software program which imparts corresponding structure for a claimed limitation. Because both Cahlander and Dietrich lack this feature in their programming, neither Cahlander nor Dietrich is capable of performing the claimed functions.

### **35 U.S.C. § 103(a) Rejections**

Applicants traverse the rejection of claims 1-22 as obvious over Cahlander in view of Dietrich. Each of claims 1-22 recites *inter alia*, initiating cooking instructions in response to desired *quantities* of the selected food items at desired time intervals. The cited art fails to disclose this feature. Specifically, while Cahlander discloses a robotic food preparation system, no desired quantities of any type are disclosed or suggested. Cahlander issues cooking instructions based on anticipated rates not desired quantities. As noted by the examiner, Cahlander describes a system to “deliver food to a storage station (to be ready) at a rate required to fill anticipated customer orders.” (emphasis added by the examiner) See also, Cahlander col. 2, lines 63-66; col. 6, lines 55-58; col. 8, lines 52-53; col. 9, lines 1-2; col. 28, lines 13-20; col. 29, lines 15-20; and col. 29, lines 25-29.

It is quite clear that the Cahlander device schedules production *rates*, not *desired quantities*. The instant application schedules desired quantities at desired times. In other words, the quantity that is required to be prepared and ready for sale at a particular time. This feature is described at col. 3. lines 13-15 and lines 54-58 of the instant application. Moreover, because Cahlander is only concerned with production rates, Cahlander fails to disclose or suggest any way of accounting for changes in quantity based on a customer purchase, a dropped and therefore not salable item, and/or an old item which is discarded. On the contrary, claims 1-22 respectively recite a control means or a processor that accomplishes all of these functions. Specifically,

corresponding to the claimed control means or programmed processor, the instant application discloses updating the specific quantities when cooking is complete (col. 4, lines 51-55), customer sales (col. 3, lines 24-30) and wasted or discarded food items (col. 4, lines 64-66). In each of these instances, the quantity of a specific food type available for sale is updated and the system issues instructions accordingly.

Furthermore, Cahlander teaches away from maintaining a desired quantity of selected food items at a desired time. By basing the cooking directions on a forecast or actual sales rate (col. 4, lines 27-36), the Cahlander device attempts to match the rate of production with the rate of sales. In doing so, Cahlander attempts to eliminate the need for maintaining a specific quantity of items at a desired time and therefore teaches away from such a feature. This feature, maintaining a desired quantity of food items at a desired time, is exactly what the instant application attempts to manage. In other words, while the instant invention manages a current inventory of products which are ready for sale, the Cahlander device operates to eliminate just such a current inventory.

Likewise, Dietrich also fails to disclose issuing cooking instructions to maintain a desired quantity of food items at a desired time. The Dietrich device is concerned with optimization of an output parameter (generally revenue or profit), not with maintaining a specific quantity of items on hand at a particular time. In fact, the output quantities of the Dietrich device change with changing production constraints (col. 12, lines 46-53). Furthermore, the quantity of items produced is an output of the Dietrich device while this same parameter is an input to the device of the instant application.

Because both Cahlander and Dietrich fail to disclose initiating cooking instructions in response to desired quantities of the selected food items at desired time intervals as is recited by each of claims 1-22, and because Cahlander teaches away from maintaining desired quantities of the selected food items at desired time intervals, none of claims 1-22 can be rendered obvious by any combination thereof. Applicants respectfully request withdrawal of the rejection of claims 1-22.

**Conclusion**

Enclosed with this response is a petition for a three month extension of time and a check in the amount of \$1020.00. The examiner is invited to contact the undersigned attorney at the telephone number listed below in order to discuss any remaining issues or matters of form that will place this case in condition for allowance.

Respectfully submitted,



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